

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FN 2008-002907

02/12/2010

JUDGE DAVID J. PALMER

CLERK OF THE COURT  
L. Wistuber  
Deputy

IN RE THE MARRIAGE OF  
TERRY K MCCLELLAN

PATRICK J MCGILL

AND

SUSAN E MCCLELLAN

SUSAN E MCCLELLAN  
4015 S RIVER DR  
TEMPE AZ 85282

LARRY J RUHL

MINUTE ENTRY

On November 18, 2009, an evidentiary hearing was convened by the Honorable Scott McCoy to consider Respondent's Petition to Enforce Court Order About Division of Property filed May 15, 2009, Respondent's "Emergency Motion Ex-Husbands Failure to Comply with Court Orders for a 2<sup>nd</sup> Time & Trying to Coerce Me into Signing Everything Away & Continually Harrassing Me and Trying to Manipulate," [sic] filed June 15, 2009.

In her pleadings, Respondent is asking the Court to essentially order Petitioner to provide her with her share of the equity in the parties' Arizona residence and to order him to return to her certain personal effects that were contained in the Arizona residence.

Petitioner takes the position that she has been given more than her equity share of the residence which resulted in the parties entering into two new agreements after the issuance of the decree in this case. In the 2<sup>nd</sup> of those agreements, she agrees to relinquish any interest or obligations she has in the Arizona residence, in a residence the parties own in Lake Tahoe, NV, and in a business venture the parties have in Arizona, which, as of yet, is not a going concern. Petitioner also denies withholding from Respondent any heirloom/inheritance type items she claims he has. His claim is that she came to the house on one occasion and only removed items

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she believed would sell; he also states that whatever items are left over may be picked up by the Respondent at any time.

On December 16, 2009, the case was reassigned from Judge Scott McCoy, who recused himself in this matter, to this Division for decisions regarding the issues covered at the November 18 hearing, and for all future proceedings.

This Court has carefully reviewed the pleadings in the file, in particular (but not limited to) the original decree in this case that was entered on April 30, 2009; the Amended Property Settlement Agreement, signed by the parties and filed with the Court on May 26, 2009, and Respondent's Objection regarding the authenticity and voluntariness of that agreement; the Court's Minute Entry Order dated May 27, 2009, and the Second Amended Property Settlement Agreement signed by the parties and filed with the Court on June 17, 2009. The Court also listened to Respondent's Objections regarding the authenticity and voluntariness of that document.

This Court has also carefully and deliberately listened to the recording of the November 18, 2009 trial in this case, carefully reviewing while listening to testimony, all of the exhibits entered into evidence at trial.

Based upon the Court's review of those matters just listed, the Court makes the following findings:

- That subsequent to the original decree in this matter, the parties did both voluntarily sign an Amended Property Agreement, and later a Second Amended Property Agreement. The Court, after hearing testimony of both Respondent and Petitioner and their explanations regarding the preparation of that document, finds by a preponderance of the evidence that those agreements are valid agreements that were voluntarily signed by the Respondent. The Court finds Respondent's various inconsistent explanations that she (1) didn't have a chance to read the documents before signing them, and/or (2) was coerced to sign the document, and/or (3) only signed a blank piece of paper regarding those documents are not credible. The Court finds Petitioner's testimony that the agreements were valid and voluntarily to be credible. The Court does therefore find those documents to be binding, relevant documents, which Respondent signed after having a chance to review and consider them. In the first of these agreements, Respondent acknowledges her either taking or having received monies or items of value that she agreed therein would be credited toward her share of the equity in 1313 Commodore. She also agrees to be responsible for ½ of the future expenses against the business, and that any amounts she doesn't pay will result in a

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reduction of her share of the business. In the second of those agreements, she did, for valuable consideration previously received in the form of payments made by Petitioner and for the additional \$5,000.00 cash payment, relinquished her interest in the 1313 Commodore property and the Lake Tahoe property and the Copper Palace. The parties both agreed that the second agreement only dealt with the equity issues in the two pieces of real estate, and that in all other respects, the terms of the decree remained in place.

- Petitioner clearly underwent significant expense in connection with the business venture the parties partially owned (a night club not yet in existence but prospectively named the “Copper Palace”), significant expenses in connection with the Arizona marital residence (“1313 E. Commodore”), and significant expenses in connection with the home the couple owned in Lake Tahoe, NV. (While as indicated the Arizona residence had some equity to which Respondent was entitled, the Lake Tahoe home did not.) The Court finds these expenses were for the benefit of the community in each instance; accordingly, the Respondent was legally responsible for half of those expenses. Respondent also received significant amounts of money from the community via such things as pawning community jewelry and taking two community krugerands out of a safe at 1313 Commodore. It is clear from the evidence that Respondent was benefited by payments made on her behalf and through monies and assets she took out of the community, well in excess of her share of the equity from the Arizona marital residence to which she was entitled. It appears those events triggered the parties to enter into the 2nd amended property settlement agreement, as the expenses discussed therein are largely those just recited.
- In the Amended Property Settlement, the parties agreed, *inter alia* that Respondent would give Petitioner credit for amounts he paid as business expenses on her behalf, and that she would be responsible for ½ of all future business expenses, and that her failure to make such payment would reduce her equity accordingly. Each party also agreed to pay for expenses relative to the 1313 E. Commodore property while they lived there in different parts of 2008. It was also agreed that Petitioner would buy out Respondent’s interest in 1313 E. Commodore, and it was clearly contemplated that he would get credit for amounts “paid herein” which referenced monies and assets she had taken, as well as monies paid on her behalf for the expenses associated with the three entities at issue. Petitioner also agreed to solely maintain payments on the loan secured by that property, and to hold Respondent harmless for any claims made against the property.

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- After the Amended Property Settlement was signed, Judge McCoy did enter an order in his minute entry dated May 27, 2009 regarding the sale of the Arizona marital residence, and establishing some timing requirements for the sale of the residence to enable Respondent to begin to receive her share of the equity in that home, which amounted to \$58,750.00.
- Therefore, in the Second Amended Property Settlement Agreement, the parties agreed that in exchange for \$5,000.00 in cash (and obviously in view of the voluminous amount of money either paid by Petitioner on behalf of Respondent, or assets or money taken from the community by Respondent), that Respondent had been paid in full for her equity interests in the 1313 E. Commodore Residence and in the Lake Tahoe home. As a result, she agreed to execute quit claim deeds on the two residences, and agreed to relinquish claims, and to be held harmless as to liabilities as to those two entities. To date she has yet to execute a quit claim deed. At the same time, Respondent has indicated that she hasn't been paid all of the \$5000 that was agreed upon by the parties at the time they signed the agreement.
- With respect to the 1313 E. Commodore property, the Court finds that Respondent has received monies or consideration well in excess of her share of equity awarded in the decree, and that in the Second Amended Property Settlement Agreement, for valuable consideration, did relinquish any claims she has as to that residence, and also was relieved, as between the parties from being responsible for any obligations on that property.

For the reasons stated herein,

**IT IS ORDERED** granting Respondent's Motions, but only to the extent of the \$5,000.00 payment she was to receive at the time of the execution of Second Amended Property Settlement Agreement, in the event that has not been paid, as it was clearly part of the consideration for that agreement. At least in some of the pleadings, Respondent claims to have been paid part but not that entire amount.

**IT IS FURTHER ORDERED** denying the remainder of the claims alleged in Respondent's Petition to Enforce Court Order About Division of Property filed May 15, 2009, Respondent's "Emergency Motion Ex-Husbands Failure to Comply with Court Orders for a 2<sup>nd</sup> Time & Trying to Coerce Me into Signing Everythng Away & Continually Harrassing Me and Trying to Manipulate," [sic] filed June 15, 2009.

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As to the issue of allowing Respondent to remove heirlooms and inherited personal property from the residence, the Petitioner testified that he did allow Respondent to come to the residence, and that she only removed those items she thought she could sell. As to any remaining items,

**IT IS ORDERED** that Respondent may go to the 1313 E. Commodore Property, with a police escort and while Petitioner is present, and remove property that is rightfully hers. Petitioner testified that much if not all of the property is found in the garage.

**IT IS FURTHER ORDERED** signing this minute entry as a formal written Order of the Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / JUDGE DAVID J. PALMER

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JUDICIAL OFFICER OF THE SUPERIOR COURT

**FILED:** Exhibits Worksheet.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.